

THE AMIN LAW GROUP, NV, LTD.

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Attorneys for Defendants / Counterclaimants
MICHAEL STUDER and
SEA FRIENDS INCORPORATED

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ENERKON SOLAR INTERNATIONAL, INC.,

Plaintiff,

v.

JOHN V. CAPPELLO, an individual;
STUDEBAKER DISTRIBUTION CORP., a
revoked Wyoming corporation; CATHY D.
COLLINS, as trustee of STUDEBAKER
DISTRIBUTION CORP and individually, VASTHI
AVILA, an individual; STREAMWORX, LLC, a
Wyoming revoked limited liability company;
JONATHAN BAKER, as trustee of
STREAMWORX, LLC and individually;
EXCELSIOR CONSULTANTS, INC., a revoked
Wyoming corporation; JEFF GREENEY, as trustee
of EXCELSIOR CONSULTANTS, INC. and
individually; SEA FRIENDS INCORPORATED, a
New York non-profit corporation; MICHAEL
STUDER, an individual; LUCIOUS GLENN, an
individual; JOHN BAUSCHKA, an individual; DOE
INDIVIDUALS 1 through 5; inclusive; and ROE
BUSINESS ENTITITES 6 through 10, inclusive

Defendants.

Case No.: 2:21-cv-01122

**DEFENDANTS' MICHAEL
STUDER AND SEA FRIENDS
INCORPORATED'S MOTION
TO DISMISS PLAINTIFF
ENERKON SOLAR
INTERNATIONAL, INC.'S
FIRST AMENDED COMPLAINT**

COMES NOW, MICHAEL STUDER and SEA FRIENDS INCOPORATED (“Defendants”) by and through their counsel of record, THE AMIN LAW GROUP, NV, LTD., to file this instant Motion to Dismiss.

I. INTRODUCTION

On or about August 26, 2022, this Court granted Plaintiff’s counsel’s Motion to Withdraw as Counsel. Since Plaintiff is an entity, Plaintiff must be represented by counsel and cannot represent itself. As a courtesy, Defendants’ counsel informed Plaintiff of the issue regarding Plaintiff’s lack of counsel and the potential filing of this motion to dismiss if not rectified. *See* Exhibit A, Email to Plaintiff, attached hereto as Exhibit A. Plaintiff responded claiming there was no order to grant the counsel’s Motion to Withdraw and that it intends to challenge the withdrawal motion. *See* Exhibit B, Email response from Plaintiff. Nevertheless, based on federal statute and precedent, this Court can and should dismiss Plaintiff’s operative First Amended Complaint with prejudice because Plaintiff has not retained new legal representation.

II. LEGAL ARGUMENT

Simply put, Plaintiff cannot appear or continue its participation in this litigation without representation. Indeed, an entity cannot proceed pro se, and therefore, a corporation, like Plaintiff, may appear in federal court only through licensed counsel. 28 U.S.C. § 1654; *see Natural Fashions, Inc. v. Best of Kashmir*, 696 Fed. Appx. 260, 261 (9th Cir. 2017) (citing *United States v. High Country Broad. Co.*, 3 F.3d 1244, 1245 (9th Cir. 1993) (“A corporation may appear in federal court only through licensed counsel.”); *C.E. Pope Equity Trust v. United States*, 818 F.2d 696, 697 (9th Cir. 1987) (“Although a non-attorney may appear in propria persona in his own behalf, that privilege is personal to him. He has no authority to appear as an attorney for others than himself.” (citations omitted))); *see also United States v. High Country Broad. Co., Inc.*, 3 F.3d 1244, 1245 (9th Cir. 1993). Courts have broad authority to control the requirements for litigation and have consistently held that it is appropriate to require licensed attorneys for corporations. *See, e.g., Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-02, 113 S. Ct. 716, 121 L. Ed. 2d 656 (1993) (“It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel”).

1 Plaintiff is a corporation and cannot represent itself in this litigation. While the Court cannot
2 compel individuals to retain an attorney, corporations must appear in court through an attorney, and
3 the Ninth Circuit has held that case dispositive sanctions – i.e., dismissal of the case – are appropriate
4 if the plaintiff corporation does not retain counsel. *See In re Am. W. Airlines*, 40 F.3d 1058, 1059 (9th
5 Cir. 1994) (citing *Smith v. Sampson*, 2022 U.S. Dist. LEXIS 62212, *2 (D. Nev. 2022)); *see also*
6 *Cleveland Hill Endowment, Inc. v. Flores*, 2022 U.S. Dist. LEXIS 36825, *3 (D. Nev. 2022) (citing
7 *High Country Broadcasting, supra*, 3 F.3d at 1245).

8 Plaintiff was informed that their counsel has been provided with an order withdrawing from
9 their representation. *See* Exhibit A. Plaintiff was provided the statute that demonstrates that, as a
10 corporation, they must retain counsel to continue their claims. *Id.* Plaintiff was also informed that the
11 instant motion to dismiss would be filed if they did not retain counsel. *Id.* Plaintiff refused to believe
12 that their counsel had an order to withdraw and stated they plan to challenge the motion to withdraw
13 and any motion for dismissal. *See* Exhibit B.

14 Notwithstanding, Plaintiff has failed to obtain counsel. Pursuant to 28 U.S.C. § 1654 and the
15 plethora of case law demonstrating that Plaintiff must obtain counsel for representation in federal court,
16 Plaintiff’s First Amended Complaint must be dismissed with prejudice.

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1 **III. CONCLUSION**

2 For the foregoing reasons, Defendants respectfully request that this Court dismiss
3 Plaintiff's operative First Amended Complaint with prejudice.

4
5 DATED: September 07, 2022

6
7 **THE AMIN LAW GROUP, NV, LTD.**

8 /s/ Ismail Amin

9 Ismail Amin (9343)
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17 Attorneys for Defendants / Counterclaimants
18 MICHAEL STUDER and
19 SEA FRIENDS INCORPORATED
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EXHIBIT A

From: [Nathaniel Collins](#)
To: info@enerkoninternational.com
Cc: [Matthew Vesterdahl](#); [Ismail Amin](#)
Subject: Case 2:21-cv-01122-JCM-VCF Enerkon Solar International, Inc. v. Capello et al
Date: Friday, September 2, 2022 10:05:00 AM
Attachments: [image001.png](#)
[image002.png](#)

Hello,

As you are aware, your counsel's motion to withdraw was granted on August 26, 2022. Therefore, you are currently not represented by counsel. Federal Statute 28 U.S.C. 1654 requires that as a corporation you have to be represented by counsel in legal matters.

This correspondence constitutes notice that our office will be filing a motion to dismiss your claims in the above referenced matter if you do not have counsel appear on your behalf by close of business on September 9, 2022 pursuant to the federal statute identified above.

Thank you.

Nathaniel Collins

talglaw.com

Phone: 702.954.3861

E-mail: ncollins@talglaw.com

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signature_3788751962



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EXHIBIT B

From: info@enerkoninternational.com
Sent: Friday, September 2, 2022 12:41 PM
To: Nathaniel Collins
Cc: Matthew Vesterdahl; Ismail Amin
Subject: Re: Case 2:21-cv-01122-JCM-VCF Enerkon Solar International, Inc. v. Capello et al

Dear Nathaniel

Please note that you are incorrect

the COURT DID NOT GRANT any Motion to Withdraw counsel in the above captioned case

the COURT DID ORDER a SHOW CAUSE hearing for October.

You have our comments about the matter and our intention to challenge both the withdrawal motion and any other actions regarding the show cause regarding the Video hearing as we informed the court and all parties before hand that we would not be available and asked the court for an extension.

The rules were not followed buy ignoring that and proceeding towards a show cause hearing for not appearing

Again there is NO ORDER TO GRANT MOTION TO WITHDRAW presented to us, or, as we see on the Docket.

Please take note of it.

Also, we would appeal any motion for dismissal on any grounds, as we have clear evidence in the case that's valid and legitimate and we will also move to refer the matter to the department of justice as well which Cohen failed to do as asked.

This is based on evidence we have based on electronic and otherwise - which clearly show not only the original allegations but also the fraudulent certificates signed by officers/defendants who had resigned 2 years earlier ! Countersigned by Standard Stock Transfer and Bar coded with transfer to other parties with NO notice to the company asking permission or notifying as per the regulations and rules.

WE discovered this from the SEC, actually and then located documents and information on our own this happened and it impacts all defendants and its a legitimate allegation, which is true and correct, its criminal and civil both.

Thank You

Sincerely

Benjamin Ballout
for the firm as per case caption above

On 2022-09-02 17:05, Nathaniel Collins wrote:

> Hello,
>

> As you are aware, your counsel's motion to withdraw was granted on
> August 26, 2022. Therefore, you are currently not represented by
> counsel. Federal Statute 28 U.S.C. 1654 requires that as a corporation
> you have to be represented by counsel in legal matters.
>
> This correspondence constitutes notice that our office will be filing
> a motion to dismiss your claims in the above referenced matter if you
> do not have counsel appear on your behalf by close of business on
> September 9, 2022 pursuant to the federal statute identified above.
>
> Thank you.
>
> Nathaniel Collins
>
> talglaw.com [1]
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> Phone: 702.954.3861
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> E-mail: ncollins@talglaw.com
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>
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> [2]
> <https://nam12.safelinks.protection.outlook.com/?url=https%3A%2F%2Ftalglaw.com%2Fnevada-office%2F&data=05%7C01%7CMargaret.Everett%40getevolved.com%7C75745c8a3b7849df8e9e08da4a5f3e06%7Ce27426a1cf5f454c9939221>

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing **DEFENDANTS' MICHAEL STUDER AND SEA FRIENDS INCORPORATED'S MOTION TO DISMISS PLAINTIFF ENERKON SOLAR INTERNATIONAL, INC.'S FIRST AMENDED COMPLAINT** were served on September 07, 2022 via CM/ECF and email to:

Enerkon Solar International, Inc.
477 Madison Ave., #6834
New York, NY 10022
Email: info@enerkoninternational.com
Plaintiff

COHEN JOHNSON, LLC
H. Stan Johnson, Esq.
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Kevin M. Johnson, Esq.
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375 E. Warm Springs Road, Suite 104
Las Vegas, NV 89119
Tel: (702) 823-3500
Fax: (702) 823-3400
Prior Counsel for Plaintiff

and via prepaid U.S. Mail to:

LAW OFFICES OF P STERLING KERR
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/s/Peter Gilmore
Peter Gilmore
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